IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 153 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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ASIAN PAINTS LIMITED - petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR DHARMESH V SHAH for petitioner(s) : 1,
MR UR BHATT PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 23/04/2007

ORAL JUDGMENT

1.0 By way of this petition, the petitioner has challenged the order of the learned Additional Sessions Judge, Ahmedabad (Rural) dated 30.09.2006 passed in Criminal Revision Application No.52 of 2006 and has further prayed to waive or modify the conditions imposed by the Judicial Magistrate, Ahmedabad (Rural)dated 07.06.2006 passed in Criminal Misc. Application No.9 of 2006.

2.0 The brief facts of the case are that the

petitioner filed a complaint with Sarkhej Police Station being C.R. No.210 of 2005 for theft of tins of colour. In pursuance to the filing of the aforesaid complaint, investigation was carried out and the accused persons were arrested. The tins of colour recovered from the said accused persons were taken into custody by the Police Authority as 'Muddamal'. The petitioner, thereafter, filed an application under Section 451 of the Cr.P.C. before the Court of the learned Judicial Magistrate, Ahmedabad(Rural) for the custody of the said 'Muddamal'. The trial Court was pleased to allow said application on conditions that the petitioner will provide Bond of amount equivalent to 1.5 times of the value of the said 'Muddamal' and that the petitioner will not sale the same without prior permission of the Court, till the charge-sheet is filed.

2.1 After filing of the charge-sheet, the petitioner preferred an application before the

trial Court for seeking permission to sale the 'Muddamal' in question and the trial Court was pleased to allow the said application on condition that petitioner would sale the said 'Muddamal' in presence of the Investigating Officer and Witnesses(Panch) and that the amount so realized will be deposited in the trial Court.

2.2 Being aggrieved with the same, the petitioner preferred revision application before the learned District Judge, Ahmedabad (Rural). The said application was rejected by the learned Revisional Court. Hence, the present petition.

3.0 Heard, learned Counsel for the parties and perused the documents placed on record. It is not in dispute that the petitioner is the owner of the 'Muddamal' stock in question. It is also not in dispute that the petitioner has been given permission by the trial Court to sell the said 'Muddamal' stock. Hence, the question which requires consideration by this Court is as to

whether the conditions imposed by the trial Court to sell the 'Muddamal' stock in the presence of the Investigating Officer and witnesses and deposit the amount received from the said sell in the Court which were confirmed by the Revisional Court, are proper or not.

3.1 From the record it transpires that the petitioner was given the custody of the 'Muddamal' on payment of an amount equal to the 1.5 times of the value of the said 'Muddamal'. Therefore, it is apparent that the amount more than the value of the 'Muddamal' has already been secured by the trial Court, and hence, the condition imposed by the trial Court to deposit the amount arising out of the sale of the said 'Muddamal' stock in the trial Court are not only unjust and improper but, also unwarranted.

3.2 Apart from that the 'Muddamal' in question are tins of different colours which are subject to natural decay. From the record it

transpires that the quantity of the 'Muddamal' is very large and that the tins are of different colours, and hence, it would be difficult for the petitioner to sell the said goods at one time. Therefore, if the petitioner is made to comply with the conditions imposed by the trial Court, he shall have to keep the Investigating Officer and witnesses present every time, some prospective buyer of the said goods approaches the petitioner which would be very difficult for the petitioner. Even, the prospective buyers of the said goods would also not wait for the presence of the Investigating Officer and witnesses which would ultimately result into financial loss to the petitioner.

3.3 I am, therefore, of the opinion that the trial Court has committed serious error on facts by imposing such conditions. Hence, the impugned order passed by the trial Court permitting the petitioner to sell the 'Muddamal' stock on condition of selling the same in the presence of

I.O. and witnesses and to deposit the sale amount with the trial Court requires to be modified and the order confirming the order of the trial Court passed by the Revisional Court requires to be quashed and set aside.

4.0 In the result, the petition is allowed. The order of the learned Additional Sessions Judge, Ahmedabad (Rural) dated 30.09.2006 passed in Criminal Revision Application No.52 of 2006 is quashed and set aside. The petitioner will be at liberty to sell the 'Muddamal' stock without securing presence of I.O. and witnesses and that he will not have to deposit the sale amount in the Court. The conditions imposed by the learned Judicial Magistrate, Ahmedabad (Rural)vide order passed in Criminal Misc. Application No.9 of 2006 dated 07.06.2006 stands modified to the aforesaid extent. Rule is made absolute.

(M.D. Shah,J.)

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